

October 16, 2006

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Gloria C. Jacobs

Date of Filing: September 15, 2006

Case Number: TFA-0174

On September 15, 2006, Gloria C. Jacobs filed an appeal from a determination issued to her on August 18, 2006 by the Department of Energy's (DOE) Oak Ridge Office (ORO). In that determination, ORO responded to a request for documents that Ms. Jacobs submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. ORO determined that it could not locate any records responsive to Ms. Jacobs' request. This appeal, if granted, would require ORO to perform an additional search and release any responsive documents or issue a new determination justifying the withholding of those documents.

I. Background

Ms. Jacobs filed a request with ORO for personnel security records pertaining to her late husband. Letter from Ms. Jacobs to ORO (undated). Specifically, Ms. Jacobs requested records regarding a security clearance obtained by her late husband in 1956-1957 to work for a contractor to the Massachusetts Institute of Technology (MIT) during the Manhattan Project. *Id.* In its determination letter, ORO stated that "a search was conducted of the files of the Oak Ridge facilities and its contractor repositories for the requested records. However, no records could be located." Letter from Amy L. Rothrock, ORO, to Ms. Jacobs (August 18, 2006) (Determination Letter). Ms. Jacobs filed the present appeal challenging the adequacy of the search performed by ORO. Letter from Gloria C. Jacobs to OHA (August 25, 2006) (Appeal Letter).

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials."

Miller v. United States Department of State, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted ORO to ascertain the scope of the search. ORO informed us that, in responding to Ms. Jacobs' request, it performed a very thorough search for documents pertaining to Ms. Jacobs' late husband. Specifically, Amy Rothrock of ORO stated,

We conducted a search of the files of the DOE Records Holding Area (RHA) in Oak Ridge based on our corporate knowledge and experience with requests for personnel security and similar information generated by former Manhattan Project and Atomic Energy Commission (AEC) atomic weapons employers from the 1940's through the mid 1950's. The search was conducted both electronically and by hand search of paper file folders and finding aids at the DOE RHA. We used [Ms. Jacobs' late husband's] identifiers to search for any records regarding him. However, no records, including but not limited to personnel security clearance records, could be located regarding [Ms. Jacobs' late husband].

There were also some historical AEC film badge records collected... for [National Institute for Occupational Safety and Health (NIOSH)] epidemiology studies and sent to the DOE RHA. These records were also searched electronically by me using copies of CD-ROMS furnished to me by NIOSH. Only one of the files on the CD-ROM pertained to MIT. I checked each page in that MIT file and could not locate [Ms. Jacob's late husband's] name or identifiers in the file.

Electronic Mail Message from Amy Rothrock, ORO, to Diane DeMoura, OHA (September 20, 2006). Based on this information, we find that ORO performed an extensive search reasonably calculated to reveal records responsive to Ms. Jacobs' request and, therefore, the search was adequate. Accordingly, Ms. Jacobs' appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed on September 15, 2006 by Gloria C. Jacobs, OHA Case No. TFA-0174, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district

in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: October 16, 2006